Form 17 (adapted)
Rule 15.06(1)(a)

Statement of cross-claim (Second Cross-Claim)

No. VID 434 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

CHERYL WHITTENBURY
Applicant

VOCATION LIMITED (ACN 166 631 330)
First Respondent / Cross-claimant by First Cross-claim

PRICEWATERHOUSECOOPERS (A FIRM) (ABN 52 780 433 757)
Second Respondent / Cross-claimant by Second and Third Cross-claims

THE PARTNERS OF JOHNSON WINTER & SLATTERY
Cross-respondents by First and Second Cross-claims

MARK EDWARD HUTCHINSON and others named in the schedule
Cross-respondents by Third Cross-claim

Capitalised terms used but not defined in this Second Cross-Claim have the same meaning as in the Applicant's Further Amended Consolidated Statement of Claim dated 2 May 2018 (**FACSOC**), a copy of which is served with this statement of cross-claim.

Nothing in this cross-claim should be taken to amount to an express or implied waiver of any privilege against self-incrimination or privilege against exposure to penalty belonging to the Cross-Claimant by second cross claim (PwC) or to any of their partners, directors, officers or employees.

Filed on behalf of	PricewaterhouseCoopers, Second Respondent		
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A. PARTIES

1. The cross-claimant by second cross claim (**PwC**) is a partnership which conducts, and has at all relevant times conducted, business within Australia as accountants and auditors.

2. The cross-respondent to the second cross-claim (**JWS**):

   (a) at all relevant times carried on business as a partnership of solicitors, with its principal place of business in Adelaide;

   (b) at all relevant times included among its partners Mr James Rozsa (**Rozsa**) and Mr Byron Koster (**Koster**);

   (c) is and was at all relevant times a person within the meaning of s 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**);

   (d) is and was at all relevant times a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

   (e) is and was at all relevant times a person within the meaning of s 18 of the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:

      (i) s 8 of the Australian Consumer Law and Fair Trading Act 2012 (Vic);

      (ii) s 28 of the Fair Trading Act 1987 (NSW);

      (iii) s 16 of the Fair Trading Act 1989 (Qld);

      (iv) s 6 of the Australian Consumer Law (Tasmania) Act 2010 (Tas);

      (v) s 19 of the Fair Trading Act 2010 (WA);

      (vi) s 14 of the Fair Trading Act 1987 (SA);

      (vii) s 7 of the Fair Trading (Australian Consumer Law) Act 1992 (ACT); and/or

      (viii) s 27 of the Consumer Affairs and Fair Trading Act (NT),

   (individually, or collectively, the **Australian Consumer Law**).

B. APPLICANT'S CLAIMS AGAINST VOCATION LIMITED

3. The Applicant (on behalf of herself and Group Members) has made claims against Vocation Limited (**Vocation**) in this proceeding by a Further Amended Consolidated Application dated 2 May 2018 (the **Application**) and the FACSOC.

C. APPLICANT'S CLAIMS AGAINST PWC

4. The Applicant (on behalf of herself and Group Members) has also made claims against PwC in this proceeding by the Application and the FACSOC, by which they allege that:

   (a) in August and September 2014 PwC engaged in conduct in contravention of s 1041H and s 1041E of the Corporations Act, s 12DA of the ASIC Act and s 18 of the Australian Consumer Law; and

   (b) by reason of those alleged contraventions, the Applicant and Group Members have suffered loss and damage.

Particulars

FACSOC, Section III.

5. PwC:

   (a) has filed a defence to the FACSOC dated 20 July 2018 (the **Defence**), a copy of which is served with this statement of cross-claim;

   (b) in its Defence, denies that the Applicant and Group Members have any cause of action against PwC, and denies that PwC has any liability to the Applicant or any Group Members for damages or for any of the other relief sought in the Application as alleged in the FACSOC.

6. If PwC is liable to the Applicant and/or the Group Members as alleged in the Application and the FACSOC (which is denied) and if the Applicant and/or Group Members have suffered loss and damage (**Applicant's and Group Members' Loss and Damage**) by reason of PwC's alleged contraventions (which is also denied), then PwC makes the following claims against JWS (the following claims and allegations being made against JWS expressly on the above basis, and solely for the purpose of this cross-claim against JWS).

D. PWC'S CROSS-CLAIMS AGAINST JWS

7. For the purpose only of this cross-claim, PwC repeats the allegations in Sections I and II of the FACSOC.

D.1 Prospectus contraventions

8. From 6 November 2013, Vocation retained JWS to advise Vocation in relation to an initial public offering of shares in Vocation (**Prospectus Retainer**), including in relation to the preparation of the prospectus issued by Vocation on 18 November 2013 (**Initial Prospectus**) and the replacement prospectus issued on 27 November 2013 (**Replacement Prospectus**).

9. It was an implied term of the Prospectus Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation.

10. On or around the dates of the Initial Prospectus and the Replacement Prospectus, JWS:

(a) advised Vocation that the Initial Prospectus and the Replacement Prospectus contained all the information necessary under s 710 of the Corporations Act (**Prospectus Advice**);

Particulars

PwC refers to paragraphs 4 and 7 of Vocation's statement of cross-claim against JWS dated 13 October 2015. Further particulars of the Prospectus Advice will be provided following discovery.

(b) did not advise Vocation that the Initial Prospectus and the Replacement Prospectus would contravene ss 728(1)(a) and (b) of the Corporations Act;

(c) represented to Vocation that JWS had exercised reasonable care and skill in giving the Prospectus Advice (**Prospectus Representation**).

Particulars

The Prospectus Representation was implied from the giving of the Prospectus Advice under the Prospectus Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

11. By giving the Prospectus Advice and omitting to give the advice pleaded in paragraph 10(b) above, and by making the Prospectus Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services, within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

12. JWS did not exercise reasonable care and skill in giving the Prospectus Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the Prospectus Advice, by reason of the matters alleged in paragraphs 122 to 134 of the FACSOC (which are repeated for the purposes only of this cross-claim).

13. By reason of the matters alleged in paragraphs 7 and 10 to 12 above, the conduct of JWS in:

    (a) giving the Prospectus Advice;

    (b) omitting to give the advice pleaded in paragraph 10(b) above; and/or

    (c) making the Prospectus Representation,

    was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (i) s 1041H of the Corporations Act;

    (ii) s 12DA of the ASIC Act; and/or

    (iii) s 18 of the Australian Consumer Law,

    (the **Prospectus Contravention**).

D.2 Disclosure and Announcement Contraventions

14. In or around late July or early August 2014, Vocation retained JWS to advise Vocation in relation to its disclosure obligations under the Australian Securities Exchange (**ASX**) Listing Rule 3.1 and s 674 of the Corporations Act (**Disclosure Obligation Retainer**).

15. It was an implied term of the Disclosure Obligation Retainer that JWS would exercise reasonable care and skill in providing advice to Vocation.

D.2.1 First Disclosure Contravention

16. On or around 11 August 2014, JWS:

    (a) advised Vocation (**11 August 2014 Disclosure Advice**) that it was not obliged to notify the ASX of:

    (i) the fact that the Victorian Department of Education and Early Childhood Development (the **Department**) was withholding from BAWM Pty Ltd (**BAWM**) (a subsidiary of Vocation) payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

    (ii) the fact that the Department was withholding from Aspin Pty Ltd (**Aspin**) (also a subsidiary of Vocation) payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract.

Particulars

The 11 August 2014 Disclosure Advice is evidenced in the minutes of a Board meeting of Vocation held on 11 August 2014 (PWC.600.001.4656), which state inter alia: "MH has received *advice from JWS that disclosure to the market is not required regarding the withholding of payments at this stage as it is a debtor timing issue". The reference to MH is to Mark Edward Hutchinson (**Hutchinson**), the Chief Executive Officer and Managing Director of Vocation.*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 11 August 2014 Disclosure Advice (**11 August 2014 Disclosure Representation**).

Particulars

The 11 August 2014 Disclosure Representation was implied from the giving of the 11 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

17. By giving the 11 August 2014 Disclosure Advice and making the 11 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services, within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

18. JWS did not exercise reasonable care and skill in giving the 11 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 11 August Disclosure Advice, by reason of the matters alleged in paragraphs 142 to 149 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, prior to and at the time JWS gave the 11 August 2014 Disclosure Advice, JWS knew that (1) the Department had expressed ongoing concerns about BAWM's compliance with the terms of its 2014-2016 VET Funding Contract, (2) the Department had withheld the payment of funds to BAWM under clause 16.2(b) of that contract, and that the Department would continue to withhold payment of those funds, (3) the Department had directed BAWM on 24 July 2014 that, effective immediately, it suspend the acceptance of all future enrolments of

*Eligible Individuals and suspend the commencement of training delivery to Eligible Individuals that had enrolled but had not yet commenced as at 24 July 2014 and (4) the Department had advised that the above suspensions and withholding payment would remain in place until such time as the Department had conducted its investigations, and was satisfied that the issues identified by it had been satisfactorily resolved. This information was contained in a letter from the Department to BAWM dated 24 July 2014 (VOC.001.001.0220), a copy of which was provided by Wendy Bonnici (**Bonnici**), BAWM's Managing Director, to Rozsa of JWS on 1 August 2014 (VOC.001.001.0218).*

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 16(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act.

Further particulars may be provided after discovery.

19. By reason of the matters alleged in paragraphs 7 and 16 to 18 above, the conduct of JWS in giving the 11 August 2014 Disclosure Advice and/or making the 11 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **First Disclosure Contravention**).

D.2.2 Second Disclosure Contravention

20. On 21 August 2014, JWS:

    (a) advised Vocation (**21 August 2014 Disclosure Advice**) that it was not obliged to notify the ASX of:

        (i) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(ii) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iii) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 21 August 2014 Disclosure Advice was expressly and/or impliedly contained in the following emails:

*Email from Rozsa to Mr Mark Hutchinson (**Hutchinson**), Chief Executive Officer of Vocation, sent at 3.08 p.m. on 21 August 2014 (VOC.001.008.9382).*

Email from Koster to Hutchinson sent at 3.54 p.m. on 21 August 2014 (VOC.006.001.3485).

Email from Koster to Hutchinson sent at 4.04 p.m. on 21 August 2014 (VOC.006.001.3490).

Email from Koster to Hutchinson and Rozsa, copied to Bonnici, sent at 5.42 p.m. on 21 August 2014 (VOC.006.001.3450).

*Email from Koster to Mr Manvinder Grewal (**Grewal**), Chief Financial Officer of Vocation, sent at 5.57 p.m. on 21 August 2014 (VOC.008.005.0032).*

Email from Koster to Hutchinson sent at 7.10 p.m. on 21 August 2014 (VOC.008.005.0433).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 21 August 2014 Disclosure Advice (**21 August 2014 Disclosure Representation**).

Particulars

The 21 August 2014 Disclosure Representation was implied from the giving of the 21 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

21. By giving the 21 August 2014 Disclosure Advice and making the 21 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services, within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

22. JWS did not exercise reasonable care and skill in giving the 21 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 21 August Disclosure Advice, by reason of the matters alleged in paragraphs 142 to 149 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraph 18 above.

*Further, prior to and at the time JWS gave the 21 August 2014 Disclosure Advice, JWS knew that Vocation had received a letter dated 21 August 2014 from Ms Lee Watts (**Watts**) of the Department to Hutchinson, in which Watts stated that "The Department, having now formed the view that the ASX should as soon as practicable be notified of the current measures that have been taken by the Department in relation to BAWM and Aspin under their Contracts, has now resolved to notify ASX Limited of this information shortly after the close of trading at 5:30PM today ... Of course, there will be no need for the Department to do so if Vocation Limited makes a disclosure in the appropriate terms first" (VOC.006.001.3518). A copy of that letter was forwarded by email by Hutchinson to Rozsa at 2.47 p.m. on 21 August 2014, who further forwarded the letter to Koster at 3 p.m. on the same day (VOC.006.001.3516).*

Further, prior to and at the time JWS gave the 21 August 2014 Disclosure Advice, JWS knew that Vocation had received an email sent by Watts of the Department to Bonnici in which Watts stated that if Vocation could provide clear and verifiable evidence supporting certain assertions by Vocation, the Department may consider varying the measures currently imposed on BAWM to limit the current withholding of funds and suspensions to certain funds and enrolments. This email was forwarded by Bonnici to Koster at 3.45 p.m. on 21 August 2014 (VOC.006.001.3494).

Further, prior to and at the time JWS gave the 21 August 2014 Disclosure Advice by the email from Koster to Hutchinson at 5.42 p.m. on 21 August 2014, JWS *knew that Vocation had received the email sent by Watts of the Department to Hutchinson at 5.19 p.m. in which Watts stated that "I note your view that 'the investigation and its anticipated outcomes' are not material in the context of the whole of Vocation. The Department does not propose to speculate about the possible outcomes of its investigations in its foreshadowed communication to ASX Limited. However, the measures that have been imposed in relation to BAWM (from 3 and 24 July 2014) and Aspin (from 5 August 2014) are not matters of speculation but are concrete facts. For our part, we consider that the information is material, given the significant role that your Victorian revenues (and in particular BAWM) evidently play in the overall revenues of Vocation Ltd." (VOC.006.001.3450). A copy of that email was forwarded by Hutchinson to Koster and Rozsa at 5.23 p.m. on 21 August 2014 (VOC.006.001.3450).*

*Further, prior to and at the time JWS gave the 21 August 2014 Disclosure Advice by the email from Koster to Hutchinson sent at 7.10 p.m. on 21 August 2014, JWS knew that the Department had earlier that day lodged a Complaint Form with the ASX in respect of Vocation (**Complaint Form**) in which the Department (1) advised the ASX that it had imposed the above measures on BAWM and had also imposed the same measures on Aspin, (2) stated that a very significant proportion of Vocation's revenues was provided by government subsidised training (between 80% and 40%), and that much of that revenue was earned by BAWM and Aspin, (3) further stated that the Department had become aware, based on recent media inquiries and coverage by Fairfax Media, that the funds suspension measure it had imposed on BAWM had become known to persons outside the Department and outside Vocation, (4) further stated that it appeared that Vocation had not yet disclosed the measures relating to BAWM and Aspin to the ASX and (5) further stated that the Department had formed the view that the ASX should as soon as practicable be notified of the current measures, so that the ASX could make enquiries of Vocation and form a view as to whether disclosure was required to the market. A copy of the Complaint Form (VOC.006.001.3427) was attached to an email from Hutchinson to Rozsa and Koster sent at 6.49 p.m. on 21 August 2014 (VOC.006.001.3425).*

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 20(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act.

Further particulars may be provided after discovery.

23. By reason of the matters alleged in paragraphs 7 and 20 to 22 above, the conduct of JWS in giving the 21 August 2014 Disclosure Advice and/or making the 21 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Second Disclosure Contravention**).

D.2.3 Third Disclosure Contravention

24. Further or in the alternative, on 22 August 2014, JWS:

(a) advised Vocation (**22 August 2014 Disclosure Advice**) that it was not obliged to notify the ASX of:

(i) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(ii) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iii) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 22 August 2014 Disclosure Advice was oral and in writing.

In so far as it was oral, it was given by Koster to the Board of Vocation during the Board meeting which commenced at around 11.00 a.m. on 22 August 2014 (PWC.600.001.4666).

In so far as it was in writing, it was expressly and/or impliedly contained in emails from Koster to Grewal, Hutchinson and others sent at 10.02 a.m. (VOC.006.001.3387), 11.01 a.m.

*(VOC.006.001.3387) and 1.24 p.m. (VOC.006.001.3377) on 22 August 2014, an email from Koster to Ms Ali Turtle (**Turtle**) of Vocation sent at 3.54 p.m. on 22 August 2014 (VOC.006.001.3349) and in an email from Koster to Simon Daniels of the ASX at 8.13 a.m. on 22 August 2014 in which Koster stated that Vocation's view is that no disclosure obligation has arisen (VOC.006.001.3409).*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 22 August 2014 Disclosure Advice (**22 August 2014 Disclosure Representation**).

Particulars

The 22 August 2014 Disclosure Representation was implied from the giving of the 22 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

25. By giving the 22 August 2014 Disclosure Advice and making the 22 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) engaged in conduct which was in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

26. JWS did not exercise reasonable care and skill in giving the 22 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 22 August Disclosure Advice, by reason of the matters alleged in paragraphs 142 to 149 of the FACSOC (which are repeated for the purposes only of this cross-claim).

PwC refers to and repeats the particulars under paragraphs 18 and 22 above. Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 22 August 2014 Disclosure Advice.

Further, prior to and at the time JWS gave the 22 August 2014 Disclosure Advice, JWS knew that the withholding of payments and funding suspensions imposed by the Department on BAWM set out in the letter dated 24 July 2014 would continue to apply until such time as the Department was satisfied either that they should be varied, or that they could be replaced by appropriate final measures under the Contract. This information was contained in a letter from the Department to Bonnici dated 15 August 2014 (VOC.006.001.3398), a copy of which was sent by email from Bonnici to Koster, copied to Rozsa, at 9.20 a.m. on 22 August 2014 (VOC.006.001.3394).

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 24(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act.

Further particulars may be provided after discovery.

27. By reason of the matters alleged in paragraphs 7 and 24 to 26 above, the conduct of JWS in giving the 22 August 2014 Disclosure Advice and/or making the 22 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **Third Disclosure Contravention**).

D.2.4 Fourth Disclosure Contravention

28. Further or in the alternative, on 24 August 2014, JWS:

    (a) advised Vocation (**24 August 2014 Disclosure Advice**) that it was not obliged to notify the ASX of:

        (i) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(ii) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iii) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 24 August 2014 Disclosure Advice was expressly and/or impliedly contained in the following emails:

Email from Koster to Hutchinson and others sent at 1.43 p.m. on 24 August 2014 (VOC.008.010.7200).

Email from Koster to Hutchinson, copied to others, sent at 3.43 p.m. on 24 August 2014 (VOC.008.005.0432).

*Email from Koster to Ms Lisa Keenan (**Keenan**) of Nightingale Communications, copied to Hutchinson and others, sent at 4.55 p.m. on 24 August 2014 (VOC.008.005.0430).*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 24 August 2014 Disclosure Advice (**24 August 2014 Disclosure Representation**).

Particulars

The 24 August 2014 Disclosure Representation was implied from the giving of the 24 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

29. By giving the 24 August 2014 Disclosure Advice and making the 24 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

30. JWS did not exercise reasonable care and skill in giving the 24 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 24 August Disclosure Advice, by reason of the matters alleged in paragraphs 142 to 149 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, and 26 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 24 August 2014 Disclosure Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 28(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act.

Further particulars may be provided after discovery.

31. By reason of the matters alleged in paragraphs 7 and 28 to 30 above, the conduct of JWS in giving the 24 August 2014 Disclosure Advice and/or making the 24 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **Fourth Disclosure Contravention**).

D.2.5 Fifth Disclosure Contravention

32. Further or in the alternative, on 25 August 2014, JWS:

    (a) advised Vocation (**25 August 2014 Disclosure Advice**) that it was not obliged to notify the ASX of:

(i) the fact that the Department was withholding from BAWM payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(ii) the fact that the Department was withholding from Aspin payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iii) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 25 August 2014 Disclosure Advice was oral and was given by Koster and Rozsa to the Board of Vocation during the Board meeting held on 25 August 2014 (PWC.600.001.4669).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 25 August 2014 Disclosure Advice (**25 August 2014 Disclosure Representation**).

Particulars

The 25 August 2014 Disclosure Representation was implied from the giving of the 25 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

33. By giving the 25 August 2014 Disclosure Advice and making the 25 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

34. JWS did not exercise reasonable care and skill in giving the 25 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 25 August Disclosure Advice, by reason of the matters alleged in paragraphs 142 to 149 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26 and 30 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 25 August 2014 Disclosure Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act.

Further particulars may be provided after discovery.

35. By reason of the matters alleged in paragraphs 7 and 32 to 34 above, the conduct of JWS in giving the 25 August 2014 Disclosure Advice and/or making the 25 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Fifth Disclosure Contravention**).

D.2.6 First Announcement Contravention

36. Further or in the alternative, on 24 and 25 August 2014, JWS:

(a) advised Vocation on the content of an ASX Announcement proposed to be made by Vocation in response to press speculation and drafted and/or settled the wording of that ASX Announcement (which announcement was made by Vocation on 25 August 2014 (the **25 August 2014 ASX Announcement**)), and in doing so advised Vocation that the 25 August 2014 ASX announcement was not misleading or deceptive and that Vocation was not obliged to make any further disclosure to the ASX (additional to that made in the 25 August 2014 ASX Announcement) concerning the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts, and the implications and effect of those audits, including the

Department's withholding of payments from BAWM and Aspin under those VET Funding Contracts and the Department's directions to BAWM and Aspin to suspend the acceptance of future enrolments of Eligible Individuals in BAWM and Aspin courses (**25 August 2014 ASX Announcement Advice**);

Particulars

The 25 August 2014 ASX Announcement Advice was expressly and/or impliedly contained or evidenced in the following emails:

Email from Koster to Keenan of Nightingale Communications, Hutchinson and others sent at 1.43 p.m. on 24 August 2014 (VOC.008.010.7200).

*Email from Rozsa to John Sydney Dawkins (**Dawkins**), Vocations Chairman, Hutchinson and others sent at 8.10 a.m. on 25 August 2014 (VOC.003.001.3448).*

Email from Rozsa to Hutchinson and others sent at 9.29 a.m. on 25 August 2014 (VOC.003.001.3442).

Email from Rozsa to Hutchinson and others sent at 9.35 a.m. on 25 August 2014 (VOC.003.001.3442).

Email from Rozsa to Hutchinson and others sent at 9.46 a.m. on 25 August 2014 (VOC.003.001.3438).

Email from Rozsa to Simon Daniels of the ASX sent at 10.01 a.m. on 25 August 2014 (VOC.008.005.0653) attaching Vocation's proposed ASX Announcement (VOC.008.005.0654).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 25 August 2014 ASX Announcement Advice (**25 August 2014 ASX Announcement Representation**).

Particulars

The 25 August 2014 ASX Announcement Representation was implied from the giving of the 25 August 2014 ASX Announcement Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

37. By giving the 25 August 2014 ASX Announcement Advice and making the 25 August 2014 ASX Announcement Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

38. JWS did not exercise reasonable care and skill in giving the 25 August 2014 ASX Announcement Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 25 August Disclosure Advice, by reason of the matters alleged in paragraphs 75, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30 and 34 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 25 August 2014 ASX Announcement Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to include the facts referred to in sub-paragraph 32(a) above in the proposed 25 August 2014 ASX Announcement, and would not have advised Vocation to include in that announcement (as it did) a statement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".

Further particulars may be provided after discovery.

39. By reason of the matters alleged in paragraphs 7 and 36 to 38 above, the conduct of JWS in giving the 25 August 2014 ASX Announcement Advice and/or making the 25 August 2014 ASX Announcement Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **First Announcement Contravention**).

D.2.7 Sixth Disclosure Contravention

40. Further or in the alternative, on 26 August 2014, JWS:

(a) advised Vocation (**26 August 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX (beyond the disclosure made in the 25 August 2014 ASX Announcement) concerning:

(i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 26 August 2014 Disclosure Advice was oral and was given by Koster and Rozsa to the Board of Vocation during the Board meeting held on 26 August 2014 (PWC.600.001.4672).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 26 August 2014 Disclosure Advice (**26 August 2014 Disclosure Representation**).

Particulars

The 26 August 2014 Disclosure Representation was implied from the giving of the 26 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

41. By giving the 26 August 2014 Disclosure Advice and making the 26 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

42. JWS did not exercise reasonable care and skill in giving the 26 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 26 August Disclosure Advice, by reason of the matters alleged in paragraphs 75, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34 and 38 above.

*Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 26 August 2014 Disclosure Advice. Further, prior to and at the time JWS gave the 26 August 2014 Disclosure Advice, JWS was aware that the Victorian Registration and Qualifications Authority (**VRQA**) had issued a production notice to Vocation which stated that the VRQA held 'concerns' and requested, amongst other things, financial information addressing the ongoing viability of BAWM. A copy of the production notice signed by Lynn Glover of the VRQA dated 22 August 2014 (VOC.001.008.4321) was sent by email from Bonnici to Rozsa and Koster, at 9.46 a.m. on 25 August 2015 (VOC.001.008.4320). Further, prior to and at the time JWS gave the 26 August 2014 Disclosure Advice, JWS was aware of legal advice provided to Vocation by Mr Patrick Joyce of Lander & Rodgers at 4.24 p.m. on 25 August 2014 that "Given the way this matter is rapidly evolving and the approach adopted by the Department so far, it is very difficult to comment about BAWM's prospects for persuading the Government to release any part of the Funds currently owing to it. On balance it appears quite possible that the Department may not release any further Funds for some time, if at all." A copy of this advice was sent by email from Bonnici to Koster and Rozsa at 5.45 p.m. on 25 August 2015 (VOC.001.001.0608).*

Further, prior to and at the time JWS gave the 26 August 2014 Disclosure Advice, JWS was aware of Vocation's letter dated 25 August 2014 to the Department requesting the release of a portion of the funds withheld by the Department from BAWM. A copy of this letter (VOC.002.001.0018) was sent by email from Bonnici to Hutchinson and others, copied to Rozsa and Koster, at 5.45 p.m. on 25 August 2015 (VOC.002.001.0010).

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statement set out in 25 August 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".

Further particulars may be provided after discovery.

43. By reason of the matters alleged in paragraphs 7 and 40 to 42 above, the conduct of JWS in giving the 26 August 2014 Disclosure Advice and/or making the 26 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **Sixth Disclosure Contravention**).

D.2.8 Seventh Disclosure Contravention

44. Further or in the alternative, on 28 August 2014, JWS:

    (a) advised Vocation (**28 August 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX (beyond the disclosure made in the 25 August 2014 ASX Announcement) concerning:

(i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 28 August 2014 Disclosure Advice was oral and/or implied. In so far as it was oral it was given by Koster to the Board of Vocation during the Board meeting held on 28 August 2014 (the ***28 August 2014 Board Meeting****) (PWC.600.001.4675). In so far as it was implied, it was implied by virtue of the following:*

(i) the Disclosure Obligation Retainer;

(ii) the Vocation Board's ongoing consideration at Board meetings held in August 2014 (including the 28 August 2014 Board Meeting) of Vocation's disclosure obligations concerning the BAWM and Aspin audits and the measures taken by the Department pursuant to those audits;

(iii) the fact that Koster attended the 28 August 2014 Board Meeting, including in the discharge of JWS's obligations under the Disclosure Obligation Retainer;

(iv) the fact that the Department's audits of BAWM and Aspin, and the status of those audits, was the principal matter discussed at the 28 August 2014 Board Meeting;

(v) the fact that Koster did not advise the Board in the course of the 28 August 2014 Board Meeting that Vocation was required to make any further disclosure to the ASX (beyond the disclosure made in the 25 August 2014 ASX Announcement) concerning:

(A) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their

2014-2016 VET Funding Contracts and the implication and effect of those audits;

(B) *the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;*

(C) *the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;*

(D) *the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 28 August 2014 Disclosure Advice (**28 August 2014 Disclosure Representation**).

Particulars

The 28 August 2014 Disclosure Representation was implied from the giving of the 28 August 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

45. By giving the 28 August 2014 Disclosure Advice and making the 28 August 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

46. JWS did not exercise reasonable care and skill in giving the 28 August 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 28 August Disclosure Advice, by reason of the matters alleged in paragraphs 75, 142 to 149 and 168 to

175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38 and 42 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 28 August 2014 Disclosure Advice.

Further, in the course of the 28 August 2014 Board Meeting at which the 28 August Disclosure Advice was given and at which Koster was present, there was discussion about Vocation seeking to find a way to secure the release of at least some of the funds withheld by the Department from BAWM and Aspin, and seeking to have the Department agree to allow BAWM and Aspin to recommence enrolments (PWC.600.001.4675). At that time Koster was aware that the 25 August 2014 ASX Announcement did not disclose:

(i) *that the Department had withheld payments to BAWM and Aspin under all courses provided by them (and not merely the three courses referred to in the 25 August 2014 ASX Announcement);*

(ii) *the amount of withheld payments; or*

(iii) *the fact that the Department had suspended enrolments of Eligible Participants in all BAWM and Aspin courses.*

Koster was aware of these things by virtue of the matters particularised above and because JWS drafted and/or settled the 25 August 2014 ASX Announcement (and accordingly knew what it contained and what it did not contain).

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statement set out in 25

August 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".

Further particulars may be provided after discovery.

47. By reason of the matters alleged in paragraphs 7 and 44 to 46 above, the conduct of JWS in giving the 28 August 2014 Disclosure Advice and/or making the 28 August 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **Seventh Disclosure Contravention**).

D.2.9 Failure to give advice on 28 August 2014

48. Further or in the alternative, on 28 August 2014 Koster attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:

    (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

    (b) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

    (c) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

    (d) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

D.2.10 Eighth Disclosure Contravention

49. Further or in the alternative, on 5 September 2014, JWS:

    (a) advised Vocation (**5 September 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:

(i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implication and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 5 September 2014 Disclosure Advice was oral and/or implied. In so far as it was oral it was given by Rozsa and/or Koster to the Board of Vocation during the Board meeting held on 5 September 2014 (PWC.600.003.2062). In so far as it was implied, it was implied by virtue of the following:

(i) the Disclosure Obligation Retainer;

(ii) the Vocation Board's ongoing consideration at Board meetings held in August and September 2014 (including the 5 September 2014 Board meeting) of Vocation's disclosure obligations concerning the BAWM and Aspin audits and the measures taken by the Department pursuant to those audits;

(iii) the fact that Rozsa and Koster attended the 5 September 2014 Board meeting, including in the discharge of JWS's obligations under the Disclosure Obligation Retainer;

(iv) the fact that the Department's audits of BAWM and Aspin, and the status of those audits, was one of the principal matters discussed at the 5 September 2014 Board meeting;

(v) the fact that Rozsa and Koster did not advise the Board in the course of the 5 September 2014 Board meeting that Vocation was required to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:

(A) *the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;*

(B) *the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;*

(C) *the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;*

(D) *the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 5 September 2014 Disclosure Advice (**5 September 2014 Disclosure Representation**).

Particulars

The 5 September 2014 Disclosure Representation was implied from the giving of the 5 September 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

50. By giving the 5 September 2014 Disclosure Advice and making the 5 September 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

51. JWS did not exercise reasonable care and skill in giving the 5 September 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 5 September Disclosure Advice, by reason of the matters alleged in paragraphs 75, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42 and 46 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 5 September 2014 Disclosure Advice.

Further, in the course of the 5 September 2014 Board meeting at which the 5 September 2014 Disclosure Advice was given and at which Rozsa and Koster were present, there was discussion about Vocation not having received a response from the Department to Vocation's request for funding to be released, and about potential further disclosure, once a further review of the correspondence with Vocation's Victorian management was conducted (PWC.600.003.2062). At that time Rozsa and Koster were both aware that the 25 August 2014 ASX Announcement did not disclose:

(i) that the Department had withheld payments to BAWM and Aspin under all courses provided by them (and not merely the three courses referred to in the 25 August 2014 ASX Announcement);

(ii) the amount of withheld payments; or

(iii) the fact that the Department had suspended enrolments of Eligible Participants in all BAWM and Aspin courses.

Koster and Rozsa were aware of these things by virtue of the matters particularised above and because JWS drafted and/or settled the 25 August 2014 ASX Announcement (and accordingly knew what it contained and what it did not contain).

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statement set out in 25 August 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".

Further particulars may be provided after discovery.

52. By reason of the matters alleged in paragraphs 7 and 49 to 51 above, the conduct of JWS in giving the 5 September 2014 Disclosure Advice and/or making the 5 September 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

   (a) s 1041H of the Corporations Act;

   (b) s 12DA of the ASIC Act; and/or

   (c) s 18 of the Australian Consumer Law,

   (the **Eighth Disclosure Contravention**).

<u>D.2.11 Failure to give advice on 5 September 2014</u>

53. Further or in the alternative, on 5 September 2014 Rozsa and Koster attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:

   (a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

   (b) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

   (c) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

   (d) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

<u>D.2.12 Ninth Disclosure Representation</u>

54. Further or in the alternative, on 7 September 2014, JWS:

(a) advised Vocation (**7 September 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:

(i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 7 September 2014 Disclosure Advice was oral and/or implied. In so far as it was oral it was given by Rozsa to the Board of Vocation during the Board meeting held on 7 September 2014 (PWC.600.001.4682). In so far as it was implied, it was implied by virtue of the following:

(i) the Disclosure Obligation Retainer;

(ii) the Vocation Board's ongoing consideration at Board meetings held in August and September 2014 (including the 7 September 2014 Board meeting) of Vocation's disclosure obligations concerning the BAWM and Aspin audits and the measures taken by the Department pursuant to those audits;

(iii) the fact that Rozsa attended the 7 September 2014 Board meeting, including in the discharge of JWS's obligations under the Disclosure Obligation Retainer;

(iv) the fact that the Department's audits of BAWM and Aspin, and the status of those audits, was one of the principal matters discussed at the 7 September 2014 Board meeting;

(v) the fact that at the 7 September 2014 Board meeting the Board discussed whether any additional disclosures to the ASX in

relation to the above issues were required, and concluded they were not (PWC.600.001.4682);

(vi) *the fact that Rozsa did not advise the Board in the course of the 7 September 2014 Board meeting that Vocation was required to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:*

(A) *the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;*

(B) *the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;*

(C) *the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;*

(D) *the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 7 September 2014 Disclosure Advice (**7 September 2014 Disclosure Representation**).

Particulars

The 7 September 2014 Disclosure Representation was implied from the giving of the 7 September 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

55. By giving the 7 September 2014 Disclosure Advice and making the 7 September 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

56. JWS did not exercise reasonable care and skill in giving the 7 September 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 7 September Disclosure Advice, by reason of the matters alleged in paragraphs 75, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46 and 51 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 7 September 2014 Disclosure Advice.

Further, in the course of the 7 September 2014 Board meeting at which the 7 September 2014 Disclosure Advice was given and at which Rozsa was present, there was discussion about whether Vocation was required to make any additional disclosures to the ASX concerning the BAWM and Aspin audits and the measures taken by the Department pursuant to them. At that time Rozsa was aware that the 25 August 2014 ASX Announcement did not disclose:

(i) that the Department had withheld payments to BAWM and Aspin under all courses provided by them (and not merely the three courses referred to in the 25 August 2014 ASX Announcement);

(ii) the amount of withheld payments; or

(iii) the fact that the Department had suspended enrolments of Eligible Participants in all BAWM and Aspin courses.

Rozsa was aware of these things by virtue of the matters particularised above and because JWS drafted and/or settled the 25 August 2014 ASX Announcement (and accordingly knew what it contained and what it did not contain).

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of *information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement misleading or deceptive.*

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statement set out in 25 August 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".

Further particulars may be provided after discovery.

57. By reason of the matters alleged in paragraphs 7 and 54 to 56 above, the conduct of JWS in giving the 7 September 2014 Disclosure Advice and/or making the 7 September 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Ninth Disclosure Contravention**).

D.2.13 Failure to give advice on 7 September 2014

58. Further or in the alternative, on 7 September 2014 Rozsa attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX (beyond that made in the 25 August 2014 ASX Announcement) concerning:

(a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(b) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(c) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(d) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

D.2.14 Tenth Disclosure Contravention

59. Further or in the alternative, on 8 September 2014, JWS:

(a) advised Vocation (**8 September 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX, beyond the disclosure made in the 25 August 2014 ASX Announcement and the disclosure proposed to be made by Vocation in a draft ASX announcement considered by the Board in the course of the 8 September 2014 Board meeting concerning a proposed share placement (the **Draft 10 September 2014 ASX Announcement**), concerning:

(i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

*The 8 September 2014 Disclosure Advice was oral and/or implied. In so far as it was oral it was given by Rozsa to the Board of Vocation during the Board meeting held on 8 September 2014 (the **8 September 2014 Board Meeting**) (PWC.600.001.4685). In so far as it was implied, it was implied by virtue of the following:*

(i) the Disclosure Obligation Retainer;

(ii) the Vocation Board's ongoing consideration at Board meetings held in August and September 2014 (including the 8 September 2014 Board Meeting) of Vocation's disclosure obligations concerning the BAWM and Aspin audits and the measures taken by the Department pursuant to those audits;

(iii) the fact that Rozsa attended the 8 September 2014 Board Meeting, including in the discharge of JWS's obligations under the Disclosure Obligation Retainer;

(iv) *the fact that the Department's audits of BAWM and Aspin, and the status of those audits, was one of the principal matters discussed at the 8 September 2014 Board Meeting;*

(v) *the fact that at the 8 September 2014 Board Meeting the Board discussed whether any additional disclosures to the ASX in relation to the above issues were required to be made, including in the Draft 10 September 2014 ASX Announcement (PWC.600.001.4685);*

(vi) *the fact that Rozsa did not advise the Board in the course of the 8 September 2014 Board Meeting that Vocation was required to make any disclosure to the ASX, beyond the disclosure made in the 25 August 2014 ASX Announcement and the disclosure proposed to be made in the Draft 10 September 2014 ASX Announcement, concerning:*

(A) *the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;*

(B) *the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;*

(C) *the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;*

(D) *the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.*

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 8 September 2014 Disclosure Advice (**8 September 2014 Disclosure Representation**).

Particulars

The 8 September 2014 Disclosure Representation was implied from the giving of the 8 September 2014 Disclosure Advice under the Disclosure

Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

60. By giving the 8 September 2014 Disclosure Advice and making the 8 September 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

61. JWS did not exercise reasonable care and skill in giving the 8 September 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 8 September Disclosure Advice, by reason of the matters alleged in paragraphs 75, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51 and 56 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 8 September 2014 Disclosure Advice.

Further, in the course of the 8 September 2014 Board Meeting at which the 8 September 2014 Disclosure Advice was given and at which Rozsa was present, there was discussion about whether Vocation was required to make any additional disclosures to the ASX concerning the BAWM and Aspin audits and the measures taken by the Department pursuant to them (PWC.600.001.4685). At that time Rozsa was aware that the neither the 25 August 2014 ASX Announcement nor the Draft 10 September 2014 ASX Announcement disclosed:

(i) *that the Department had withheld payments to BAWM and Aspin under all courses provided by them (and not merely the three courses referred to in the 25 August 2015 ASX Announcement);*

(ii) *the amount of withheld payments; or*

(iii) *the fact that the Department had suspended enrolments of Eligible Participants in all BAWM and Aspin courses.*

Rozsa was aware of these things by virtue of the matters particularised above and because JWS drafted and/or settled the 25 August 2014 ASX Announcement and the Draft 10 September 2014 ASX Announcement (and accordingly knew what they contained and what they did not contain). As to the allegation that JWS drafted and/or settled the Draft 10 September 2014 ASX Announcement, PwC refers to and repeats paragraphs 64 to 67 below.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statement set out in 25 August 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".

Further particulars may be provided after discovery.

62. By reason of the matters alleged in paragraphs 7 and 59 to 61 above, the conduct of JWS in giving the 8 September 2014 Disclosure Advice and/or making the 8 September 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Tenth Disclosure Contravention**).

D.2.15 Failure to give advice on 8 September 2014

63. Further or in the alternative, on 8 September 2014 Rozsa attended the Board meeting of Vocation held that day and did not advise that Vocation was obliged to make further disclosure to ASX (beyond the disclosure made in the 25 August 2014 ASX

Announcement and the disclosure proposed to be made in the Draft 10 September 2014 ASX Announcement) concerning:

(a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(b) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(c) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(d) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

D.2.16 Second Announcement Contravention

64. Further or in the alternative, between on or around 5 September 2014 and 10 September 2014, JWS:

(a) advised Vocation on the content of the Draft 10 September 2014 ASX Announcement (which announcement was made by Vocation to the ASX on 10 September 2014 (the **10 September 2014 ASX Announcement**)), and in doing so advised Vocation that the 10 September 2014 ASX Announcement was not misleading or deceptive or likely to mislead or deceive and that Vocation was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement and in the 10 September 2014 ASX Announcement) concerning the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits, including the Department's withholding of payments from BAWM and Aspin under those VET Funding Contracts and the Department's directions to BAWM and Aspin to suspend the acceptance of future enrolments of Eligible Individuals in BAWM and Aspin courses (**10 September 2014 ASX Announcement Advice**);

Particulars

The 10 September 2014 ASX Announcement Advice was expressly and/or impliedly contained or evidenced in the following emails:

Email from Hutchinson to Rozsa and another sent at 9.12 a.m. on 5 September 2014 (VOC.006.001.6707).

*Email from Siobhan Weaver (**Weaver**) of Nightingale Communications to Hutchinson and Rozsa sent at 9.30 a.m. on 5 September 2014 (VOC.006.001.6702).*

Email from Weaver to Hutchinson and Rozsa sent at 10.48 a.m. on 5 September 2014 (VOC.006.001.6685).

Email from Hutchinson to Weaver and Rozsa sent at 12.02 p.m. on 5 September 2014 (VOC.006.001.6666).

Email from Rozsa to Hutchinson and Grewal sent at 12.30 p.m. on 5 September 2014 (VOC.006.001.6665).

Email from Hutchinson to Rozsa and others sent at 3.24 p.m. on 5 September 2014 (VOC.001.009.0443).

*Email from Sophia Bobeff (**Bobeff**) of JWS to Hutchinson, Grewal and others sent at 4.42 p.m. on 5 September 2014 (VOC.006.001.3248).*

Email from Rozsa to Hutchinson and Grewal sent at 6.01 p.m. on 5 September 2014 (VOC.006.001.6539) attaching revised draft ASX Announcement (VOC.006.001.6540).

Email from Hutchinson to Rozsa and Bobeff sent at 6.49 p.m. on 5 September 2014 (VOC.006.001.6528).

Email from Rozsa to Hutchinson sent at 6.54 p.m. on 5 September 2014 (VOC.008.011.4127).

Email from Grewal to Hutchinson and others, copied to Rozsa, sent at 7.23 p.m. on 5 September 2014 (VOC.008.003.0990).

Email from Rozsa to Grewal, copied to Hutchinson, Koster and Bobeff sent at 11.36 a.m. on 6 September 2014 (VOC.501.004.0366).

Email from Hutchinson to Rozsa and Dawkins sent at 8.04 a.m. on 7 September 2014 (VOC.006.001.6214).

Email from Hutchinson to Rozsa and others sent at 3.48 p.m. on 7 September 2014 (VOC.006.001.5982).

Email from Bobeff to Weaver, copied to Hutchinson, Rozsa and others, sent at 4.54 p.m. on 7 September 2014 (VOC.006.001.3210).

Email from Hutchinson to Weaver and others, copied to Rozsa and others, sent at 2.13 p.m. on 8 September 2014 (VOC.006.001.5747).

Email from Bobeff to Weaver, copied to Hutchinson, Rozsa and others, sent at 3.29 p.m. on 8 September 2014 (VOC.008.002.0218).

Email from Weaver to Hutchinson and Dawkins, copied to Rozsa and others, sent at 4.46 p.m. on 8 September 2014 (VOC.006.001.5636).

Email from Grewal to Hutchinson and another, copied to Rozsa and others, sent at 11.02 p.m. on 8 September 2014 (VOC.006.001.5559).

*Email from Alex Dignam (**Dignam**) of UBS to Hutchinson, Rozsa and others sent at 7.37 p.m. on 9 September 2014 (VET.0014.0001.0021).*

Email from Dignam to Hutchinson, Rozsa and others sent at 8.06 p.m. on 9 September 2014 (VOC.006.001.5357).

Email from Tredenick to Hutchinson and Rozsa, copied to others, sent at 9.29 p.m. on 9 September 2014 (VOC.008.002.0727).

Email from Grewal to Dignam and Hutchinson, copied to Bobeff, Rozsa and others, sent at 1.27 a.m. on 10 September 2014 (VOC.006.001.4836).

Email from Dignam to Hutchinson and others, copied to Grewal, Bobeff, Rozsa and others, sent at 8.13 a.m. on 10 September 2014 (VET.0014.0001.1561).

Email from Dignam to Hutchinson and others, copied to Rozsa and others, sent at 8.31 a.m. on 10 September 2014 (VOC.008.002.0009).

Email from Dignam to Hutchinson and others, copied to Rozsa and others, sent at 9.05 a.m. on 10 September 2014 (VET.0014.0001.0446).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 10 September 2014 ASX Announcement Advice (**10 September 2014 ASX Announcement Representation**).

Particulars

The 10 September 2014 ASX Announcement Representation was implied from the giving of the 10 September 2014 ASX Announcement Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

65. By giving the 10 September 2014 ASX Announcement Advice and making the 10 September 2014 ASX Announcement Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

66. JWS did not exercise reasonable care and skill in giving the 10 September 2014 ASX Announcement Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 10 September ASX Announcement Advice, by reason of the matters alleged in paragraphs 75, 91 to 93, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51, 56 and 61 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 10 September 2014 ASX Announcement Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made both the 25 August 2014 ASX Announcement and the 10 September 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statement set out in 25 August 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation", and *further would not have advised Vocation to include in the 10 September 2014 ASX Announcement (as it did) a statement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation".*

Further particulars may be provided after discovery.

67. By reason of the matters alleged in paragraphs 7 and 64 to 66 above, the conduct of JWS in giving the 10 September 2014 ASX Announcement Advice and/or making the 10 September 2014 ASX Announcement Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Second Announcement Contravention**).

D.2.17 Third Announcement Contravention

68. Further or in the alternative, between on or around 5 September 2014 and 16 September 2014, JWS:

(a) advised Vocation on the content of a Cleansing Notice to be lodged by Vocation with the ASX pursuant to s 708(5) of the Corporations Act in respect of the issue of shares by Vocation under a proposed share placement (which Cleansing Notice was issued by Vocation to the ASX on 16 September 2014 (the **Cleansing Notice**)), and in doing so advised Vocation that the Cleansing Notice was not misleading or deceptive or likely to mislead or deceive and that Vocation was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement and in the 10 September 2014 ASX Announcement) concerning the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits, including the Department's withholding of payments from BAWM and Aspin under those VET Funding Contracts and the Department's directions to BAWM and Aspin to suspend the acceptance of future enrolments of Eligible Individuals in BAWM and Aspin courses (**Cleansing Notice Advice**);

Particulars

The Cleansing Notice Advice was expressly and/or impliedly contained or evidenced in the following emails:

Email from Hutchinson to Rozsa and another sent at 9.12 a.m. on 5 September 2014 (VOC.006.001.6707).

Email from Rozsa to Hutchinson and Grewal sent at 12.30 p.m. on 5 September 2014 (VOC.006.001.6665).

Email from Rozsa to Hutchinson and others sent at 5.03 p.m. on 5 September 2014 (VOC.006.001.6573).

Email from Grewal to Hutchinson and others (copied to Rozsa) sent at 7.23 p.m. on 5 September 2014 (VOC.008.003.0990).

Email from Rozsa to Grewal and another sent at 10.43 a.m. on 6 September 2014 (VOC.008.002.1292).

Email from Grewal to Hutchinson and another, copied to Rozsa and others, sent at 11.02 p.m. on 8 September 2014 (VOC.006.001.5559).

Email from Bobeff to Dignam of UBS, copied to Rozsa and another, sent at 11.14 a.m. on 12 September 2014 (VOC.006.001.4062).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the Cleansing Notice Advice (**Cleansing Notice Representation**).

Particulars

The Cleansing Notice Representation was implied from the giving of the Cleansing Notice Advice under the Disclosure Obligation Retainer, alternatively under a separate retainer pursuant to which Vocation retained JWS to advise on the proposed share placement and to prepare the necessary documentation for it, including the Cleansing Notice, which retainer(s) included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under the retainer(s). As to the alleged separate retainer, it was entered into on or around 5 September 2014, and is evidenced by the emails referred to in the particulars under sub-paragraph 68(a) above.

69. By giving the Cleansing Notice Advice and making the Cleansing Notice Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

70. JWS did not exercise reasonable care and skill in giving the Cleansing Notice Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the Cleansing Notice Advice, by reason of the matters alleged in paragraphs 75, 91 to 93, 97, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51, 56, 61 and 66 above. Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the Cleansing Notice Advice. By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement and the Cleansing Notice misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statements set out in 25 August 2014 ASX Announcement and the 10 September 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation", and further would have advised Vocation to include the facts referred to in sub-paragraph 53(a) above in the Cleansing Notice, and would not have advised Vocation to include in the Cleansing Notice (as it did) a statement that "[a]s at the date of this notice, Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act".

Further particulars may be provided after discovery.

71. By reason of the matters alleged in paragraphs 7 and 68 to 70 above, the conduct of JWS in giving the Cleansing Notice Advice and/or making the Cleansing Notice

Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Third Announcement Contravention**).

D.2.18 Fourth Announcement Contravention

72. Further or in the alternative, on 18 September 2014, JWS:

(a) advised Vocation on the content of an ASX Announcement to be made by Vocation in order to respond to press speculation (which announcement was made by Vocation to the ASX on 18 September 2014 (the **18 September 2014 ASX Announcement**)), and in doing so advised Vocation that the 18 September 2014 ASX Announcement was not misleading or deceptive or likely to mislead or deceive and that Vocation was not obliged to make any further disclosure to the ASX (beyond that made in the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement and the 18 September 2014 ASX Announcement) concerning the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits, including the Department's withholding of payments from BAWM and Aspin under those VET Funding Contracts and the Department's directions to BAWM and Aspin to suspend the acceptance of future enrolments of Eligible Individuals in BAWM and Aspin courses (**18 September 2014 ASX Announcement Advice**);

Particulars

The 18 September 2014 ASX Announcement Advice was expressly and/or impliedly contained or evidenced in the following emails:

Email from Koster to Grewal sent at 10.05 a.m. on 18 September 2014 (VOC.006.001.3207).

Email from Hutchinson to Simon Daniels of the ASX and Grewal, copied to Koster, sent at 11.24 a.m. on 18 September 2014 (VOC.006.001.3201).

Email from Hutchinson to Weaver and Koster sent at 1.13 p.m. on 18 September 2014 (VOC.006.001.3185).

Email from Weaver to Hutchinson and Koster sent at 1.30 p.m. on 18 September 2014 (VOC.006.001.3182).

Email from Koster to Weaver, copied to Hutchinson and Grewal, sent at 1.43 p.m. on 18 September 2014 (VOC.008.004.0526).

*Email from Koster to Doug Halley (**Halley**) of Vocation, sent at 1.48 p.m. on 18 September 2014 (VOC.003.001.4695).*

Email from Kym Peake of the Department to Hutchinson, sent at 1.40 p.m. on 18 September 2014, which was forwarded by Hutchinson to Koster and others by email sent at 2.16 p.m. on 18 September 2014, in which the Department stated inter alia: "We could not endorse the content of the ASX announcement" (VOC.008.004.0530).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 18 September 2014 ASX Announcement Advice (**18 September 2014 ASX Announcement Representation**).

Particulars

The 18 September 2014 ASX Announcement Representation was implied from the giving of the 18 September 2014 ASX Announcement Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

73. By giving the 18 September 2014 ASX Announcement Advice and making the 18 September 2014 ASX Announcement Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

74. JWS did not exercise reasonable care and skill in giving the 18 September 2014 ASX Announcement Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 18 September 2014 ASX Announcement Advice, by reason of the matters alleged in paragraphs 75, *91 to 93, 97, 100, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).*

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51, 56, 61, 66 and 70 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 18 September 2014 ASX Announcement Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement, the Cleansing Notice and the 18 September 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statements set out in 25 August 2014 ASX Announcement and the 10 September 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation", and to withdraw the statement in the Cleansing Notice that "[a]s at the date of this notice, Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act", and further would not have advised Vocation to include in the 18 September 2014 ASX Announcement (as it did) the statement that "Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation" (VOC.008.018.4326).

Further particulars may be provided after discovery.

75. By reason of the matters alleged in paragraphs 7 and 72 to 74 above, the conduct of JWS in giving the 18 September 2014 ASX Announcement Advice and/or making the 18 September 2014 ASX Announcement Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Fourth Announcement Contravention**).

D.2.19 Eleventh Disclosure Contravention

76. Further or in the alternative, on 19 September 2014, JWS:

(a) advised Vocation (**19 September 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX, beyond that made in the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement and the 18 September 2014 ASX Announcement, concerning:

(i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 19 September 2014 Disclosure Advice was expressly and/or impliedly contained in the following emails:

Email from Koster to Hutchinson sent at 8.07 a.m. on 19 September 2014 (VOC.003.001.4631).

Email from Koster to Hutchinson sent at 9.38 a.m. on 19 September 2014 (VOC.008.004.0942).

Email from Koster to Hutchinson and others sent at 11.32 a.m. on 19 September 2014 (VOC.003.001.4641).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 19 September 2014 Disclosure Advice (**19 September 2014 Disclosure Representation**).

Particulars

The 19 September 2014 Disclosure Representation was implied from the giving of the 19 September 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

77. By giving the 19 September 2014 Disclosure Advice and making the 19 September 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

78. JWS did not exercise reasonable care and skill in giving the 19 September 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 19 September 2014 Disclosure Advice, by reason of the matters alleged in paragraphs 75, 91 to 93, 97, 100, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51, 56, 61, 66, 70 and 74 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 19 September 2014 Disclosure Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement, the Cleansing Notice and the 18 September 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statements set out in 25 August 2014 ASX Announcement and the 10 September 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation", to withdraw the statement in the Cleansing Notice that "[a]s at the date of this notice, Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act", and to withdraw the statement in the 18 September 2014 ASX Announcement that "Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation" (VOC.008.018.4326).

Further particulars may be provided after discovery.

79. By reason of the matters alleged in paragraphs 7 and 76 to 78 above, the conduct of JWS in giving the 19 September 2014 Disclosure Advice and/or making the 19 September 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **Eleventh Disclosure Contravention**).

D.2.20 The Twelfth Disclosure Contravention

80. Further or in the alternative, on 22 September 2014, JWS:

    (a) advised Vocation (**22 September 2014 Disclosure Advice**) that it was not obliged to make any further disclosure to the ASX, beyond that made in the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement and the 18 September 2014 ASX Announcement, concerning:

        (i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(ii) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(iii) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(iv) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses;

Particulars

The 22 September 2014 Disclosure Advice was expressly and/or impliedly contained in the following emails:

Email from Koster to Weaver, copied to Hutchinson, Grewal and others, sent at 9.10 a.m. on 22 September 2014 (VOC.006.001.3112).

Email from Koster to Hutchinson and others sent at 12.36 p.m. on 22 September 2014 (VOC.006.001.3109).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 22 September 2014 Disclosure Advice (**22 September 2014 Disclosure Representation**).

Particulars

The 22 September 2014 Disclosure Representation was implied from the giving of the 22 September 2014 Disclosure Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

81. By giving the 22 September 2014 Disclosure Advice and making the 22 September 2014 Disclosure Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

82. JWS did not exercise reasonable care and skill in giving the 22 September 2014 Disclosure Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 22 September 2014 Disclosure Advice, by reason of the matters alleged in paragraphs 75, 91 to 93, 97, 100, 142 to 149 and 168 to 175 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51, 56, 61, 66, 70, 74 and 78 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 22 September 2014 Disclosure Advice.

Further, on 22 September 2014, Koster of JWS received an email from Simon Daniels (ASX) sent at 12.32 p.m. stating that "ASX will require a further clarifying announcement by the Company in relation to the status of the Victorian funding contracts". The email also listed the points that the announcement should address, which included "Specifically spell out why the Company does not consider this information to be material. Which as [the] ASX understands is essentially that the suspension of relevant 3 courses (which has led to the funding for all courses being withheld), on reinstatement offending with or without the suspended courses is not material to the Company." VOC.008.004.0880. No such ASX announcement was forthcoming.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement, the Cleansing Notice and the 18 September 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statements set out in 25 August 2014 ASX Announcement and the 10 September 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation", to withdraw the statement *in the Cleansing Notice that "[a]s at the date of this notice, Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act", and to withdraw the statement in the 18 September 2014 ASX Announcement that "Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation" (VOC.008.018.4326).*

Further particulars may be provided after discovery.

83. By reason of the matters alleged in paragraphs 7 and 80 to 82 above, the conduct of JWS in giving the 22 September 2014 Disclosure Advice and/or making the 22 September 2014 Disclosure Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

    (a) s 1041H of the Corporations Act;

    (b) s 12DA of the ASIC Act; and/or

    (c) s 18 of the Australian Consumer Law,

    (the **Twelfth Disclosure Contravention**).

D.2.21 The Fifth Announcement Contravention

84. Further or in the alternative, between on or around 21 October 2014 and 27 October 2014, JWS:

    (a) advised Vocation on the content of an ASX Announcement to be made by Vocation concerning a potential (and later actual) settlement between Vocation and the Department (which announcement was made by Vocation to the ASX on 27 October 2014 (the **27 October 2014 ASX Announcement**)), and in doing so advised Vocation that the 27 October 2014 ASX Announcement was not misleading or deceptive or likely to mislead or deceive and that Vocation was not obliged to make any further disclosure to the ASX (beyond that made in the 15 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement and the 18 September 2014 ASX Announcement, and that to be made in the 27 October 2014 ASX Announcement) concerning:

        (i) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits, including the Department's withholding of payments from BAWM and Aspin under those VET Funding Contracts and the Department's directions to BAWM and Aspin to suspend the acceptance of future enrolments of Eligible Individuals in BAWM and Aspin courses;

(ii) the outcome of those audits,

(**27 October 2014 ASX Announcement Advice**);

Particulars

The 27 October 2014 ASX Announcement Advice was expressly and/or impliedly contained or evidenced in the following emails:

Email from Koster to Hutchinson sent at 5.06 p.m. on 21 October 2014 (VOC.006.001.2852).

Email from Koster to Hutchinson sent at 8.44 p.m. on 21 October 2014 (VOC.006.001.2710).

Email from Koster to Hutchinson sent at 10.31 a.m. on 24 October 2014 (VOC.006.001.2656).

Email from Turtle of Vocation to Koster sent at 3.08 p.m. on 21 October 2014 (VOC.006.001.2617).

Email from Koster to Hutchinson and Turtle sent at 3.55 p.m. on 24 October 2014 (VOC.006.001.2587).

Email from Koster to Hutchinson and others sent at 5.38 p.m. on 24 October 2014 (VOC.006.001.2561).

Email from Hutchinson Koster and others sent at 6.34 p.m. on 24 October 2014 (VOC.006.001.2534).

*Email from John Hurst (**Hurst**) of Cannings Corporate Communications to Koster sent at 6.55 p.m. on 24 October 2014 (VOC.006.001.2514).*

Email from Koster to Hutchinson and Hurst sent at 2.59 p.m. on 25 October 2014 (VOC.006.001.2328).

Email from Hutchinson to Koster sent at 4.02 p.m. on 25 October 2014 (VOC.006.001.2309).

Email from Hutchinson to Hurst and Grewal, copied to Koster and others, sent at 7.27 p.m. on 25 October 2014 (VOC.006.001.2213).

Email from Koster to Dawkins and Grewal sent at 8.04 p.m. on 25 October 2014 (VOC.006.001.2199).

Email from Koster to Hurst sent at 8.08 p.m. on 25 October 2014 (VOC.006.001.2194).

Email from Grewal to Koster and Dawkins sent at 1.28 a.m. on 26 October 2014 (VOC.006.001.2186).

Email from Hutchinson to Koster and others sent at 9.23 a.m. on 26 October 2014 (VOC.004.005.0096).

Email from Hurst to Koster sent at 3.00 p.m. on 26 October 2014 (VOC.006.001.2135).

Email from Koster to Hutchinson sent at 3.26 p.m. on 26 October 2014 (VOC.006.001.2130).

Email from Koster to Hutchinson sent at 4.40 p.m. on 26 October 2014 (VOC.006.001.2094).

Email from Koster to Grewal sent at 4.47 p.m. on 26 October 2014 (VOC.006.001.2087).

Email from Hutchinson to Dawkins and others, copied to Koster and others, sent at 4.51 p.m. on 26 October 2014 (VOC.003.001.5867).

Email from Koster to Hutchinson sent at 5.54 p.m. on 26 October 2014 (VOC.006.001.2071).

Email from Hutchinson Koster sent at 5.54 p.m. on 26 October 2014 (VOC.006.001.2071).

Email from Hutchinson to Koster sent at 6.51 p.m. on 26 October 2014 (VOC.006.001.2059).

Email from Grewal to Koster and others sent at 7.25 p.m. on 26 October 2014 (VOC.006.001.2053).

Email from Koster to Hutchinson sent at 9.06 p.m. on 26 October 2014 (VOC.006.001.2024).

Email from Hutchinson to Dawkins and others, copied to Koster and others, sent at 9.30 p.m. on 26 October 2014 (VOC.004.005.0039).

Announcement discussion teleconference notice sent by Koster as Organiser to Hutchinson and others on 26 October 2014 (VOC.008.009.6170).

*Email from Michelle Tredenick (**Tredenick**) of Vocation to Koster and Hutchinson sent at 10.37 p.m. on 26 October 2014 (VOC.006.001.1946).*

Email from Rozsa to Grewal, copied to Hutchinson and Koster sent at 10.44 p.m. on 26 October 2014 (VOC.006.001.1963).

Email from Koster to Hutchinson sent at 10.58 p.m. on 26 October 2014 (VOC.006.001.1958).

Email from Hurst to Koster and others sent at 7.16 a.m. on 27 October 2014 (VOC.006.001.1924).

Email from Koster to Hurst, Hutchinson and others sent at 8.17 a.m. on 27 October 2014 (VOC.006.001.1914).

Email from Hurst to Koster and others sent at 8.37 a.m. on 27 October 2014 (VOC.006.001.1913).

Email from Grewal to Hutchinson, Koster and others sent at 9.10 a.m. on 27 October 2014 (VOC.006.001.1906).

Email from Koster to Grewal, Hutchinson and others sent at 9.45 a.m. on 27 October 2014 (VOC.006.001.1876).

Email from Koster to Hutchinson, Grewal and others, copied to Rozsa and others, sent at 11.18 a.m. on 27 October 2014 (VOC.006.001.1876).

(b) represented to Vocation that JWS had exercised reasonable care and skill in giving the 27 October 2014 ASX Announcement Advice (**27 October 2014 ASX Announcement Representation**).

Particulars

The 27 October 2014 ASX Announcement Representation was implied from the giving of the 27 October 2014 ASX Announcement Advice under the Disclosure Obligation Retainer, which included an implied term that JWS would exercise reasonable care and skill in providing advice to Vocation under that retainer.

85. By giving the 27 October 2014 ASX Announcement Advice and making the 27 October 2014 ASX Announcement Representation, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

86. JWS did not exercise reasonable care and skill in giving the 27 October 2014 ASX Announcement Advice.

Particulars

JWS did not exercise reasonable care and skill in giving the 22 September 2014 Disclosure Advice, by reason of the matters alleged in paragraphs 75, 91 to 93, 97, 100, 106 to 109, 142 to 149, 168 to 175 and 200 to 206 of the FACSOC (which are repeated for the purposes only of this cross-claim).

Further, PwC refers to and repeats the particulars under paragraphs 18, 22, 26, 30, 34, 38, 42, 46, 51, 56, 61, 66, 70, 74, 78 and 82 above.

Further, the information referred to in those particulars was known to JWS prior to and at the time it gave the 27 October 2014 ASX Announcement Advice.

By reason of the above matters, JWS was aware of the information regarding the Department's investigation of BAWM and Aspin, and its implications, which the Applicant alleges in paragraphs 142-149 of the FACSOC Vocation was required to disclose to the ASX pursuant to ASX Listing Rule 3.1, and was also aware of information which the Applicant alleges in paragraphs 168 to 175 of the FACSOC made the 25 August 2014 ASX Announcement, the 10 September 2014 ASX Announcement, the Cleansing Notice and the 18 September 2014 ASX Announcement misleading or deceptive.

A solicitor exercising reasonable care and skill, having the knowledge referred to above, would have advised Vocation to notify the facts referred to in sub-paragraph 32(a) above to the ASX in accordance with Vocation's disclosure obligations under ASX Listing Rule 3.1 and s 674 of the Corporations Act, and would also have advised Vocation publicly to withdraw the statements set out in 25 August 2014 ASX Announcement and the 10 September 2014 ASX Announcement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation", to withdraw the statement in the Cleansing Notice that "[a]s at the date of this notice, Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act", and to withdraw the statement in the 18 September 2014 ASX Announcement that "Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation" (VOC.008.018.4326).

Further particulars may be provided after discovery.

87. By reason of the matters alleged in paragraphs 7 and 84 to 86 above, the conduct of JWS in giving the 27 October 2014 ASX Announcement Advice and/or making the 27 October 2014 ASX Announcement Representation was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law,

(the **Fifth Announcement Contravention**).

D.2.22 Advice omissions

88. Further or in the alternative, between on or around late July or early August 2014 and 25 August 2014, JWS did not advise Vocation that Vocation was obliged to make disclosure to the ASX concerning:

(a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(b) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(c) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(d) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

89. Further or in the alternative, between 26 August 2014 and 27 October 2014, JWS did not advise Vocation that Vocation was obliged to make disclosure to the ASX (beyond that made in the 25 August ASX Announcement, the 10 September 2014 ASX Announcement, the 18 September 2014 ASX Announcement and the 27 October 2014 Announcement) concerning:

(a) the Department's audits of BAWM and Aspin in relation to their compliance with their obligations under their 2014-2016 VET Funding Contracts and the implications and effect of those audits;

(b) the Department's withholding from BAWM of the payment of all funds due to BAWM under BAWM's 2014-2016 VET Funding Contract;

(c) the Department's withholding from Aspin of the payment of all funds due to Aspin under Aspin's 2014-2016 VET Funding Contract;

(d) the fact that the Department had directed BAWM and Aspin to suspend the acceptance of all future enrolments of Eligible Individuals in BAWM and Aspin courses.

90. By omitting to give the advice pleaded in paragraphs 48, 53, 58, 63, 88 and 89 above, JWS engaged in conduct which was:

(a) in relation to financial products (being Vocation shares), within the meaning of sub-sections 1041H(1) and 1041H(2)(b) of the Corporations Act;

(b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act; and/or

(c) in trade or commerce, within the meaning of s 4 of the Australian Consumer Law.

91. By reason of the matters alleged in paragraph 7 above, the conduct of JWS in omitting to give the advice pleaded in paragraphs 48, 53, 58, 63, 88 and 89 above was misleading or deceptive or likely to mislead or deceive, in contravention of:

(a) s 1041H of the Corporations Act;

(b) s 12DA of the ASIC Act; and/or

(c) s 18 of the Australian Consumer Law.

E RELIEF

92. For the purpose of this cross-claim:

(a) the Prospectus Advice, the 11 August 2014 Disclosure Advice, the 21 August 2014 Disclosure Advice, the 22 August 2014 Disclosure Advice, the 24 August 2014 Disclosure Advice, the 25 August 2014 Disclosure Advice, the 25 August 2014 ASX Announcement Advice, the 26 August 2014 Disclosure Advice, the 28 August 2014 Disclosure Advice, the 5 September 2014 Disclosure Advice, the 7 September 2014 Disclosure Advice, the 8 September 2014 Disclosure Advice, the 10 September 2014 ASX Announcement Advice, the Cleansing Notice Advice, the 18 September 2014 ASX Announcement Advice, the 19 September 2014 Disclosure Advice, the 22 September 2014 Disclosure Advice and the 27 October 2014 ASX Announcement Advice are referred to collectively as the **JWS Advices**;

(b) the Prospectus Representation, the 11 August 2014 Disclosure Representation, the 21 August 2014 Disclosure Representation, the 22 August 2014 Disclosure

Representation, the 24 August 2014 Disclosure Representation, the 25 August 2014 Disclosure Representation, the 25 August 2014 ASX Announcement Representation, the 26 October 2014 Disclosure Representation, the 28 August 2014 Disclosure Representation, the 5 September 2014 Disclosure Representation, the 7 September 2014 Disclosure Representation, the 8 September 2014 Disclosure Representation, the 10 September 2014 ASX Announcement Representation, the Cleansing Notice Representation, the 18 September 2014 ASX Announcement Representation, the 19 September 2014 Disclosure Representation, the 22 September 2014 Disclosure Representation and the 27 October 2014 ASX Announcement Representation are referred to collectively as the **JWS Representations**;

(c) the Prospectus Contravention, the First Disclosure Contravention, the Second Disclosure Contravention, the Third Disclosure Contravention, the Fourth Disclosure Contravention, the Fifth Disclosure Contravention, the First Announcement Contravention, the Sixth Disclosure Contravention, the Seventh Disclosure Contravention, the Eighth Disclosure Contravention, the Ninth Disclosure Contravention, the Tenth Disclosure Representation, the Second Announcement Contravention, the Third Announcement Contravention, the Fourth Announcement Contravention, the Eleventh Disclosure Representation, the Twelfth Disclosure Contravention, the Fifth Announcement Contravention and the contraventions alleged in paragraph 91 above are referred to collectively as the **JWS Contraventions**.

93. If PwC contravened ss 1041H and/or 1041E of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the Australian Consumer Law as alleged by the Applicant in the FACSOC (which is denied), and if those contraventions caused the Applicant's and Group Members' Loss and Damage as alleged in the FACSOC (which is also denied), then each of the JWS Contraventions caused and/or contributed to the Applicant's and Group Members' Loss and Damage, and JWS is liable to the Applicant and Group Members for that loss and damage pursuant to sections 1041I and/or 1325 of the Corporations Act, sections 12GF and/or 12GM of the ASIC Act and/or section 236 of the Australian Consumer Law.

Particulars

The JWS Contraventions (or one or more of them) caused or contributed to:

(i) *Vocation's contraventions of s 674(2) of the Corporations Act alleged by the Applicants in the FACSOC, alternatively caused or contributed to some of those contraventions;*

(ii) *Vocation's contraventions of s 1041H and s 1041E of the Corporations Act, s 12DA of the ASIC Act and s 18 of the Australian Consumer Law alleged by the Applicants in the FACSOC, alternatively caused or contributed to some of those contraventions,*

(collectively, ***Vocation's Contravening Conduct****), by reason of the fact that Vocation's Contravening Conduct was done (or omitted to be done) in reliance on one or more of the JWS Advices and one or more of the JWS Representations and/or by virtue of the failure by JWS to give the advice pleaded in paragraphs 48, 53, 58, 63, 88 and 89 above.*

In turn, Vocation's Contravening Conduct caused the Applicant's and Group Members' Loss and Damage.

Further or alternatively, but for the JWS Contraventions, Vocation would not have engaged in Vocation's Contravening Conduct (and the Applicant and Group Members would not have suffered the Applicant's and Group Members' Loss and Damage), but rather Vocation:

(i) would have disclosed to the ASX the information referred to in sub-paragraphs 16(a) above, on or around 11 August 2014;

(ii) would have disclosed to the ASX the information referred to in sub-paragraphs 20(a) above, on or around 21 August 2014;

(iii) further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 22 August 2014;

(iv) further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 24 August 2014;

(v) further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 25 August 2014;

(vi) further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above in the 25 August 2015 ASX Announcement, and would not have included in that announcement the statement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation";

(vii) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 26 August 2014;*

(viii) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 28 August 2014;*

(ix) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 5 September 2014;*

(x) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 7 September 2014;*

(xi) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 8 September 2014;*

(xii) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above in the 10 September 2014 ASX Announcement, and would not have included in that Announcement the statement that "Vocation considers that neither the [Department's] review nor its anticipated outcomes are material to Vocation";*

(xiii) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above in the Cleansing Notice, and would not have included in that notice the statement that "[a]s at the date of this notice, Vocation has complied with the provisions of Chapter 2M of the Corporations Act and section 674 of the Corporations Act";*

(xiv) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above in the 18 September 2014 ASX Announcement, and would not have included in that announcement the statement that "Vocation would like to reiterate, as stated in ASX announcements on 25 August 2014 and 10 September 2014, that neither the review nor its anticipated outcomes are expected to be material to Vocation";*

(xv) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 19 September 2014;*

(xvi) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above, on or around 22 September 2014;*

(xvii) *further or alternatively, would have disclosed to the ASX the information referred to in sub-paragraph 20(a) above in the 27 October 2014 ASX Announcement.*

94. By reason of the matters alleged in paragraph 93 above, if PwC is liable to the Applicant and Group Members for the Applicant's and Group Members' Loss and Damage as alleged in the FACSOC (which is denied), then:

(a) JWS is also liable to the Applicant and Group Members for that same loss and damage; and

(b) PwC, in respect of any non-apportionable claim made against it in the FACSOC:

(i) is entitled to contribution and/or an indemnity from JWS pursuant to Part IV of the *Wrongs Act 1958* (Vic) on the basis that it is just and equitable that JWS make contribution and/or give such an indemnity; further or alternatively

(ii) is entitled to equitable contribution from JWS.

F RESERVATION OF RIGHTS

95. In reliance on the privilege against self-incrimination or privilege against exposure to penalty, and to guard against the risk that to do so might constitute a waiver of those privileges, PwC does not at this time cross-claim for damages suffered by PwC by reason of the conduct of JWS, but reserve their right to do so (by amending this cross claim or otherwise) at an appropriate time.

Date: 20 July 2018

Signed by Damian Grave
Herbert Smith Freehills
Lawyer for the Second Respondent / Cross-claimant by second cross claim

This pleading was prepared by Michael Garner of Counsel.

Certificate of lawyer

I Damian Grave certify to the Court that, in relation to the statement of claim filed on behalf of the Cross Claimant by second cross claim, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 July 2018

Signed by Damian Grave
Herbert Smith Freehills
Lawyer for the Second Respondent / Cross-claimant by Second and Third cross-claims

Schedule

No. VID 434 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

Applicant

Applicant	Cheryl Whittenbury

Respondents

First Respondent	Vocation Limited (ACN 166 631 330)
Second Respondent:	PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)

Details of all cross-claims in the proceeding

First Cross-claim

Cross-claimant

Cross-claimant by First Cross-claim:	Vocation Limited (ACN 166 631 330)

Cross-respondent

Cross-respondent by First Cross-claim:	The Partners of Johnson Winter & Slattery

Second Cross-claim

Cross-claimant

Cross-claimant by Second Cross-claim:	PricewaterhouseCoopers (a firm) (ABN.52 780 433 757)

Cross-respondent

Cross-respondent by Second Cross-claim:	The Partners of Johnson Winter & Slattery

Third Cross-claim

Cross-claimant

Cross-claimant by Third Cross-claim:	PricewaterhouseCoopers (A Firm) (ABN 52 780 433 757)

Cross-respondents

First Cross-respondent by Third Cross-claim:	Mark Edward Hutchinson
Second Cross-respondent by Third Cross-claim:	Manvinder Grewal
Third Cross-respondent by Third Cross-claim:	John Sydney Dawkins
Fourth Cross-respondent By Third Cross-claim:	Stephen John Tucker
Fifth Cross-respondent by Third Cross-claim:	Michelle Kim Tredenick
Sixth Cross-respondent by Third Cross-claim:	Douglas James Halley
Seventh Cross-respondent by Third Cross-claim:	Vocation Limited (ACN 166 631 330)